IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3183 of 2006
To
FIRST APPEAL No. 3201 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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THE SPECIAL LAND ACQUISITION OFFICER - Appellant(s)
Versus
MEMUDABEN BHARATSANG JASBHA & 1 - Defendant(s)

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Appearance :
MR APURVA DAVE, AGP IN FA NO.3183 OF 2006 TO FA NO.3189 OF 2006 for Appellant(s) : 1,

MR KALPESH PANDIT, AGP IN FA NO.3190 OF 2006 TO FA NO.3195 OF 2006 for Appellant(s) : 1,

MS REETA CHANDARANA, AGP IN FA NO.3196 OF 2006 TO FA NO.3201 OF 2006 for Appellant(s) : 1,
MR AJ PATEL for Defendant(s) : 1,
None for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 09/07/2007

ORAL JUDGMENT

1. The Special Land Acquisition Officer, Narmada Yojna, Unit-7, Bharuch, appellant has filed these appeals under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code, 1908 against the judgment and award dated 25/8/2004 passed by the learned Civil Judge (SD), Bharuch in Land Reference Case Nos.343 of 1997 to 361 of 1997. By the impugned judgment, the learned Judge was pleased to allow the reference cases and held that the claimants are entitled to receive Rs.40.90 per sq. mt. for the acquired lands as an additional compensation over and above the compensation already awarded by the Special Land Acquisition Officer.

2. It may be noted that the Land Acquisition Officer has awarded Rs.2.10 per sq. mt. as compensation for the acquired lands. So, now, in all the claimants are entitled to receive Rs.43/- per sq. mt. in this behalf. The learned Judge has further

held that notification under Section 4 of the Land Acquisition Act i.e. 22/4/1993 to the date of award passed by the Special Land Acquisition Officer i.e. 31/3/1995 as provided under Section 23(1)(A) of the Land Acquisition Act, the claimants are entitled to receive increase at the rate of 12% and also held that the claimants are entitled to receive 30% solatium and 9% interest per annum for the period of one year from the date of taking over the possession of the acquired land and thereafter, at the rate of 15% per annum on aggregated amount i.e. additional award, solatium, 12% increase under section 23(1)(A) of the Land Acquisition Act till the amount is fully paid or deposited.

3. Proposal was made by Executive Engineer, Narmada Yojna Canal Distribution Vibhag 2/6, Bharuch to the State Government to acquire the lands of village Saran, Taluka-Vagra, District-Bharuch for the purpose of construction of saran Minor Canal of Narmada Yojna of Sardar Sarovar Narmada Nigam Ltd. On perusal of the said proposal, the Government was satisfied that the lands of village Saran mentioned

in the said proposal were likely to be needed for the said public purpose. Therefore, the State Government has issued notification under Section 4 of the Land Acquisition Act which was published in the official Gazette on 22/4/1993. Thereafter, necessary inquiry under Section 5 of the Act was made and a report, as contemplated by Section 5(A) (2) of the Act was forwarded by the Special Land Acquisition Officer to the Government. On scrutiny of the same, the Government was satisfied that the lands of village Saran were needed for public purpose i.e. or construction of canal under Narmada Project. Therefore, declaration under Section 6 was made which was published on 16/3/1994. Interested persons were thereafter served with the notices for determination of compensation payable to them. Accordingly the claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.50/- per sq. mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated 31/3/1995, awarded compensation at the rate of Rs.2.10 per sq. meter to the claimants

for the acquired lands. The claimants were of the opinion that the compensation awarded by the Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer to their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the Reference Cases were made to the District Court, Bharuch which were numbered as Land Acquisition Reference Case Nos. 343 of 1997 to 361 of 1997.

4. On behalf of claimants, Ibrahim Bapusaheb has given his deposition at Exh.32. He has stated in his deposition that his land along with the lands of other claimants have been acquired by the Special Land Acquisition Officer for the purpose of construction of Saykha Minor Canal of Narmada Yojna of Sardar Sarovar Narmada Nigam Ltd. He has seen all the acquired lands and he has given deposition on behalf of all the claimants. According to him, Rs.2.10 per sq. mt. awarded by the Land Acquisition

Officer is very less, improper, inadequate and meagre and therefore, they have claimed Rs.50/- per sq. mt. for their acquired lands. According to him, their lands are equal n level and fertility and they were taking crops of cotton and juwar and some of the claimants were taking crops of tuver and juwar in their acquired lands. He was cultivating the land by modern system and taking crops of cotton in first season and in second season he was taking crops of juwar. Same way, other claimants were taking crops of cotton and juwar and some of the claimants were taking crops of tuver and juwar. For showing the same, they have produced copy of the village form 7/12 at Exh.11 to 26. They were taking crops of cotton at 25 quintal per acre and they were selling the cotton to the Vagra Taluka Co-operative Marketing & Processing Society Ltd., Vagra and some private traders and selling tot he Agricultural Produce Market Committee, Bharuch. The average price of the Agricultural Produce Market Committee, Bharuch for the year 1992-93 was Rs.865/- per quintal, in the year 1993-94, Rs.1,338/- per quintal and in the

year 1994-95, Rs.2,221/- per quintal. The claimants have produced the copy of average price list issued by the Agricultural Produce Market Committee, Bharuch for showing the average price is produced at Exh.37. They were getting Rs.33,400/- per acre as yearly income from cotton and after deducting 35% of agricultural expenses, the claimants are getting Rs.21,700/- per acre as net income per year. After the crops of cotton they were taking crops of juwar and they were taking 15 quintal per acre juwar and they were getting Rs.5,700/- per year per acre from the crops of juwar and after deducting 35% agricultural expenses they were getting Rs.3,700/- per year per acre as net income from the crops of juwar. Some of the claimants were taking crops of tuver. They were taking crops of tuver in three times. Fist and second time they were taking crops of green tuver and they were taking corps of green tuver at 40 quintal per acre and they were selling the green tuver to the Agricultural Produce Market Committee, Bharuch and to some private traders. The average price list of green tuver of Agricultural Produce

Market Committee, Bharuch in the year of 1992-93 was Rs.1,143/- per quintal, in the year of 1993-94 was Rs.1,334/- per quintal and in the year of 1994-95 was Rs.1,435/-. To show the same, they have produced average price list at Exh.34. The annual income for the green tuver was Rs.53,300/- per acre and after deducting 35% agricultural expenses, the net income comes to Rs.34,700/-. Third time, they were taking crops of dry tuver to 12 quintal per acre and the average rate of dry tuver was Rs.1,318/- in the year 1992-93, Rs.1,115/- in the year 1993-94 and Rs.1,660/- in the year 1994-1995. For showing the same, the claimants have produced average price list issued by the Agricultural Produce Market Committee, Bharuch at Exh.37. They were getting Rs.13,330/- per year per acre from the dry tuver and after deducting 35% agricultural expenses they were getting Rs.8,700/- per acre per year as net income from dry tuver. That they were getting Rs.43,400/- per year per acre as net income from green tuver and dry tuver. In second season, they were taking crops of juwar and they were getting 15 quintal crops of juwar per acre and the

price of juwar was rs.380/- per quintal in the year 1993 and they were getting Rs.5,700/- per year per acre from the crops of juwar after after deducting agricultural expenses, they were getting Rs.3,700/- per acre per year as net income from the crops of juwar.

5. He further stated that in block no.156 of ownership of Ashokbhai B. Patel, there were two wells as situated adjoining to his acquired land of block no.377 and 320 and he and other claimants were cultivating and taking crops by irrigation from these two wells. Their village is situated at the distance of three kms. away from Vagra. He has further stated that the lands of village Vagra were acquired by the Control Centre Vagra, ONGC, Ankleshwar and the notification under Section 4 of the Land Acquisition Act for the same was published on 28/4/1989 and the notification under Section 6 of the Land Acquisition Act was published on 26/7/1989 and the award was passed on 24/5/1990 in which the Land Acquisition Officer has awarded Rs.7/- per sq. mt. which is very less, improper and

inadequate and therefore, the claimants of that land have filed references under Section 18 of the Land Acquisition Act before the 3rd Joint Civil Judge (SD), Bharuch and the learned Judge has awarded Rs.38/- per sq. mt. for the acquired land as compensation in Land Acquisition Case No.1285 of 1990. Copy of the said judgment is produced at Exh.27. The lands acquired in the said case which is exhibited as Exh.27 and the lands of their village are equal in level and fertility and fertility and equal in produce and irrigation facility and situated near to each other. Their acquired lands were situated at the distance of three kms. from Vagra and their lands are developed. The heard quarter Vagra is situated at the distance of three kms. away. The GIDC is situated in the village Vilayat Bhersam which is adjoining to their lands. The population of their village at the time of acquisition was 1000 to 1500. There were Bal Mandir, Primary School, Co-operative Society, Milk Society, Panchayat office situated in their village. Their village has got facilities of telephone, light, water etc. There

is facility of pakka road for going towards taluka and District Head Quarter from their village. The claimants have prayed for Rs.50/- per sq. mt. as compensation for their acquired lands along with 9% interest for the first year from taking over possession and thereafter at the rate of 15% and they have also claimed 12% increase and 30% solatium also.

6. This witness has been cross-examined by the learned advocates for the opponents but nothing come out from cross-examination.

7. The claimants have also examined one Mahendrabhai Nanavati at Exh.36. He has deposed that he is serving in Agricultural Produce Market Committee since last thirty two years and he is serving as a Assistant Secretary since last ten years. They have issued certificate at Exh.37 in which the price of green tuver, dry tuver, cotton are shown. In his cross-examination, he has stated that it is not true that he is giving deposition with a view to get more compensation by the claimants.

8. The claimants have examined Sanjaykumar Krishnakant Patel at Exh.38. He has deposed that he is serving in Vagra Taluka Co-operative Marketing Processing Society Ltd. since last four years. They have issued certificate at Exh.39 for showing the price of cotton. This witness has been cross examined by the opponents but nothing come out from the cross-examination.

9. The claimants have examined Hanumanbhai Ishwarbhai Patel at Exh.40. He has deposed that he is serving as Manager in Vagra Taluka Sale Sangh and he is serving in this Sangh since last thirty years. They have issued certificate for average price of dry tuver for the year 199-93 which is produced at Exh.41. He has stated that the farmers are getting reasonable price of their crops. This witness has been cross-examined by the learned advocates for the opponents but nothing come out from the cross-examination.

10. In view of the same, the learned advocates for the

claimants have stated that they are entitled to more compensation in this behalf. In view of the same, as stated above, the Reference Court has awarded Rs.40.90 as an additional compensation. So, in all the compensation is Rs.43/- per sq. mt.

11. It may be noted that no witness was examined on behalf of the Acquiring authorities.

12. On the basis of the evidence adduced by the claimants, the Reference Court was of the opinion that on the yield basis as well as on the basis of the previous award of the Reference Court relating to the lands of village Vagra, the claimants were entitled to additional amount of Rs.40.90 per sq. mt. and awarded additional amount of compensation at the rate of Rs.40.90 per sq. mt. by the impugned award dated 25/8/2004, giving rise to the present appeals.

13. This Court has heard all the three AGPs for the appellants and Mr.A.J.Patel, learned senior counsel for the opponents-original claimants in each appeal

at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

14. In the case of **Special Land Acquisition, Davangere vs. P.Veerabhadarappa, etc. etc., reported in AIR 1984 SC 774 (See; Para 7 on page 777),** it is laid down that the function of the Court in awarding compensation under the Act is to ascertain the market value of land at the date of the notification under Section 4(1) and the methods of valuation may be: (1) opinion of experts; (2) the prices paid within a reasonable time in bona fide transaction of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. What is emphasised in the said decision is that normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to

if there is evidence of comparable sales or other evidence for computation of the market value. For the guidance of courts in the country, it is laid down that yield method can be resorted to only when no other method is available. Applying the principles laid down in the above quoted decision to the facts of the present case, this Court finds that the Reference Court was not justified in determining the market value of the lands acquired on yield basis more particularly when the evidence in the form of previous award of the Reference Court relating to the lands of Village: Vagra was available on record. The previous award of the Reference Court relating to the lands of Village: Vagra is produced by the claimants also. It indicates that the lands of Village: Vagra were acquired for public purpose of ONGC Project pursuant to publication of notification issued under Section 4 of the Act in the official gazette on April 28, 1989. Therein, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.7/- per square mtr. Feeling aggrieved, the claimants had sought references and accordingly, the references were made to the District Court, Bharuch, where they

were numbered as L.A.R.Nos.1282 of 1990 to 1291 of 1990. In those cases, witness Musabhai Umarji Patel was examined at Exhibit 96 whereas another witness Hanumanbhai Ishwarbhai Patel was examined at Exhibit 103 and witness Omprakash Dahyabhai Pandya was examined at Exhibit 109. Further, the claimants had also examined Raisang Babubhai Makwana at Exhibit 118 and witness Ramanbhai Pujabhai Vankar was examined at Exhibit 125. On behalf of the Acquiring Authorities, witness Harishchandra Kanaiyalal Shah was examined at Exhibit 131 and witness Parsottambhai Haribhai Chotaliya was examined at Exhibit 135. On appreciation of the evidence adduced by the parties, the Reference Court by judgment and award dated January 10, 2002 awarded additional amount of compensation to the claimants at the rate of Rs.31/- per square mtr. Thus, those claimants were awarded compensation at the rate of Rs.38/- per sq. mer.

15.As observed earlier, it was asserted by witness Ashokbhai Bhailalbhai that the lands of Village: Vagra and the lands acquired in the instant cases were situated near each other. It was also claimed by him that the lands acquired from Village Vagra

were similar in all respects to the lands acquired in the instant case. This assertion was neither challenged by the Acquiring Authorities nor proved to be untrue. Under the circumstances, this Court is of the opinion that the previous award of the Reference Court relating to the lands of Village: Vagra would furnish good guidance for the purpose of determining the market value of the lands acquired in the instant cases from Village: Saran. It is well settled that the previous award of the Reference Court relating to the lands of a village, which has attained finality, can be taken into consideration as a good guidance for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village. The record further shows that the previous award of the Reference Court relating to the lands of Village Vagra, which was rendered in Land Reference Case Nos.1282 to 1291 of 1990, was subjected to challenge in First Appeal Nos.1942 to 1951 of 2003 and cognate matters and that the Division Bench of High Court (Coram:J.M.Panchal J. (as he was then) and Abhilasha Kumari, J.) in the matters of Deputy General Manager vs. Heirs of deceased Ratanbhai Karsanbhai dated June 19, 2006 upheld the same. The

fact that the previous award of the Reference Court relating to the lands of Village Vagra has attained finality cannot be disputed by the learned counsel for the appellant. Therefore, the claimants were justified in placing reliance upon the same for the purpose of claiming enhanced compensation. There is a general consensus between the learned counsels for the parties that on the basis of the previous award relating to the lands of Village Vagra, as confirmed by the High Court, the claimants would be entitled to compensation, in all, at the rate of Rs.43/- (Rs.40.90 + Rs.2.10) per square mtr. Thus, this Court does not find any merits in the appeals and, therefore, the appeals are liable to be dismissed.

16. For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(K.M.Mehta, J.)

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